

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

TEXAS ROADHOUSE, INC., TEXAS  
ROADHOUSE HOLDINGS LLC, and  
TEXAS ROADHOUSE MANAGEMENT  
CORP., d/b/a TEXAS ROADHOUSE

Defendants.

---

Civil Action No. 11-11732-DJC

ORDER ON DEFENDANTS' REQUEST FOR LEAVE TO PROPOUND  
ADDITIONAL INTERROGATORIES (#427)

November 23, 2015

KELLEY, U.S.M.J.

In August, 2015, Plaintiff EEOC requested 25 additional interrogatories (#388) and after a hearing (#390) Defendants filed an opposition (#394), the EEOC filed a response (#397), and Defendants filed a reply (#401). On October 2, the Court issued an electronic order allowing Plaintiff's request (#407). As stated in the order, the Court found that Plaintiff's request was reasonable given that Defendants had disclosed 84 new Stage I witnesses less than ninety days before the close of fact discovery. The alternative was for the parties to conduct additional depositions of these witnesses (as there are many hours of depositions still left for Plaintiff to utilize). The Court found that the use of interrogatories would be more efficient than having the parties conduct depositions. Thus the Court found that the EEOC had shown "good cause" for

the request under Rule 16(b)(4), and had made out the “particularized showing” as to why additional discovery was needed for the request under Rule 33.

At a telephone conference on October 13, Defendants asked that they, too, be given 25 additional interrogatories, arguing that it was only fair to give both sides the same number. (Defendants likened their situation to one in which a mother had given one of her children extra pieces of Halloween candy but had given another child none.) The Court declined to give Defendants additional interrogatories without any showing as to why they needed them. On October 27, Defendants filed a request for the additional interrogatories (#427) and on November 10, the EEOC filed an opposition (#438).

At the outset, the Court notes that Defendants have not used up their original interrogatories; according to the EEOC, Defendants have used 44 of their initial 50. (#438 at 2.) The additional interrogatories that Defendants propose to propound essentially ask the EEOC what evidence they have that Defendants are guilty of age discrimination. (#427 at 3-15.) Defendants say that they require these interrogatories in order to “finalize their defense.” (#427 at 7.) Defendants did not “need” these additional interrogatories before the EEOC received additional interrogatories. Thus, Defendant’s argument boils down to: it is unfair to give one side more interrogatories.

It bears repeating that the Court gave additional interrogatories to the EEOC because shortly before the close of discovery, in a case that was filed in 2011, the Defendants disclosed 84 new Stage I witnesses to the EEOC. The parties have had numerous disputes concerning the scheduling of depositions. This Court, at various points, has told the parties where they should hold depositions, when, and how many. Rather than have the parties engage in the usual

disputes about scheduling depositions, etc., and have the parties travel across the country in a short period of time to depose many of these witnesses, the Court permitted the EEOC to propound interrogatories, in the interest of efficiently moving the case forward. Defendants' request, in contrast, was not in response to any development in the case, such as the noticing of numerous new witnesses. It was simply in response to the EEOC's getting more interrogatories. Defendants have not demonstrated "good cause" under Rule 16 or the "particularized showing" under Rule 33 that is necessary.

Defendants cite cases in support of their proposition that the law requires that both sides have the same number of interrogatories. In *Mendoza v. Regis Corp.*, No. SA-01-CA-0937-FB (NN), 2005 U.S. Dist. LEXIS 8518, at \*13-14 (W.D. Tex. Mar. 21, 2005), the Court gave each side fifteen interrogatories at the beginning of post-judgment proceedings. In *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420-YGR (DMR), 2015 U.S. Dist. LEXIS 45976, at \*49 (N.D. Cal. Mar. 17, 2015), in response to defendants' claim that each defendant should be allowed to serve 60 interrogatories, the court gave each side 60 interrogatories at the beginning of the case. These cases are not the same as this case, where close to the end of discovery one side requested additional interrogatories specifically in order to respond to a situation that arose.

For the reasons stated above, Defendants' request for additional interrogatories (#427) is denied.

/s/ M. Page Kelley  
M. Page Kelley  
United States Magistrate Judge